

### **REMARKS**

Claims 1 to 14 are pending in this case. Applicants hereby respectfully request that the subject patent application be reconsidered in view of the following remarks.

Claims 1 to 14 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Napster Client/Server protocol in view of US Patent 7,069,438 to Balabine et al. This rejection is respectfully traversed.

The present claimed invention was made before the effective date of Balabine et al. To support their position in this regard, applicants submit herewith (a) a verified English translation of the Chinese priority application no. 02130660.5 filed on September 16, 2002 to which the international stage of the subject application claims priority, and (b) a "Declaration of Inventor Under 37 C.F.R. § 1.131" (the "Declaration") signed by one of the inventors, Mr. Jingnan Huang, and Exhibits A-D.

The Declaration establishes conception of the claimed invention prior to the effective date of Balabine et al. (*i.e.*, August 19, 2002) coupled with due diligence from prior to the reference date to the filing of the Chinese priority application, to which the international stage of the subject application claims priority. In particular, Exhibit B, C and D evidence the forwarding of the invention disclosure on August 5, 2002 for preparation of the Chinese patent application and the inventors and in-house counsel working with the outside law firm during the period prior to the filing of the Chinese patent application. By establishing a prior invention, applicants respectfully submit that Balabine et al. does not qualify as a prior art reference of the claimed invention. Therefore, claims 1 to 14 are allowable over the cited art. The Examiner is respectfully requested to withdraw the subject rejection.

Each of the pending claims in this case is believed to be in immediate condition for allowance and such action is earnestly solicited.

Respectfully submitted,

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Enclosures